

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

PATTY ANN TURNER,

Petitioner,

3:11-cv-6314-AA

v.

ORDER

NANCY HOWTON,

Respondent.

AIKEN, District Judge.

Petitioner filed a petition under 28 U.S.C. § 2254 challenging her May 17, 1999, judgment from the Linn County Circuit Court after convictions for Murder and Criminal Conspiracy to Commit Murder (Exhibit 101). After a jury convicted petitioner, the trial court imposed a sentence of 25 years imprisonment. (Id.)

Respondent now moves to deny relief and dismiss this proceeding on the ground that in a prior proceeding under 28 U.S.C. § 2254, petitioner specifically waived any further federal challenges to the convictions and sentences she challenges in this

case. Response to Petition (#17) p. 1.

As noted above, petitioner was initially convicted of Murder and Criminal Conspiracy to Commit Murder in 1999 and sentenced to 25 years imprisonment. In a prior federal habeas corpus proceeding, in which petitioner was represented by the Federal Public Defenders Office, the parties entered into a Stipulation Agreement (Exhibit 107). In particular, the state agreed to allow petitioner to file a successive petition for post-conviction relief (petitioner's previous petition had been dismissed for failure to prosecute). The state further agreed to waive the statute of limitations and procedural default defenses which would have precluded petitioner from filing another state post-conviction petition. Thus, petitioner would be able to litigate the merits of the claims that would have been cognizable in her first state post-conviction petition. In return, petitioner agreed to dismiss the previous federal habeas corpus petition with prejudice. In addition, petitioner waived any possible filing for future federal litigation on or related to petitioner's convictions and sentences in State v. Turner, Linn County Circuit Court Case No. 98010115 - the convictions and sentences petitioner challenges in this proceeding. With the aid of counsel, petitioner reviewed the agreement and signed the agreement along with an affidavit stating that she knowingly, intelligently, and voluntarily agreed to all conditions of the agreement. Exhibit 107.

Based on the Stipulation Agreement, petitioner was allowed to pursue a second state post-conviction appeal. Petitioner filed a second petition for PCR in *Turner v. Hoefel*, Washington County Circuit Court Case No. C071777CV, and the court denied relief. The Oregon Court of Appeals affirmed without opinion and the Oregon Supreme Court denied review. Exhibits 109 - 111.

Despite the express agreement prohibiting her from doing so, petitioner subsequently filed this proceeding.

Petitioner has not responded to respondent's motion to dismiss this proceeding or offered any argument as to why the agreement is not valid and enforceable.

Based on the foregoing, petitioner's Petition (#2) is denied. This proceeding is dismissed.

### ***Certificate of Appealability***

***Should petitioner appeal, a certificate of appealability is denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c)(2).***

DATED this 19 day of April, 2012.

  
Ann Aiken  
United State District Judge